



PSLA, TERMS & CONDITIONS
IMPORTANT: BY USING YOUR ACTIV5 DEVICE, YOU ARE AGREEING TO BE BOUND BY THE FOLLOWING TERMS:

- A. ACTIVBODY PRODUCT SOFTWARE LICENSE AGREEMENT
- B. ACTIVBODY TERMS OF SALE (covered in sections 1, 2 and 3 below)
- C. ACTIVBODY TERMS OF SERVICE (covered in section 5 below)
- D. ACTIVBODY PRIVACY POLICY (covered in section 4 below)
- E. NOTICES FROM ACTIVBODY, INC. (covered in section 4 below)

ACTIVBODY INC.
ACTIVBODY PRODUCT SOFTWARE LICENSE AGREEMENT
Single Use License

PLEASE READ THIS ACTIVBODY PRODUCT SOFTWARE LICENSE AGREEMENT ("LICENSE") CAREFULLY BEFORE USING YOUR ACTIV5 DEVICE OR DOWNLOADING ANY SOFTWARE UPDATE ACCOMPANYING THIS LICENSE. BY USING YOUR ACTIV5 DEVICE OR DOWNLOADING A SOFTWARE UPDATE, AS APPLICABLE, YOU ARE AGREEING TO BE BOUND BY THE TERMS OF THIS LICENSE. IF YOU DO NOT AGREE TO THE TERMS OF THIS LICENSE, DO NOT USE THE ACTIV5 DEVICE OR DOWNLOAD ANY SOFTWARE UPDATE.

IF YOU HAVE RECENTLY PURCHASED AN ACTIV5 DEVICE AND YOU DO NOT AGREE TO THE TERMS OF THE LICENSE, YOU MAY RETURN THE ACTIV5 DEVICE WITHIN THE RETURN PERIOD TO ACTIVBODY, INC. OR AN AUTHORIZED DISTRIBUTOR WHERE YOU OBTAINED IT FOR A REFUND, SUBJECT TO ACTIVBODY, INC.'S RETURN POLICY FOUND AT:

www.activ5.com

1. General.

The software (including embedded software and third party software), documentation, interfaces, content, fonts and any data that came with your Activ5 Device (the "Original Activ5 Software"), as may be updated or replaced by feature enhancements, software updates or system restore software (the "Activ5 Software Updates"), whether in read only memory, on any other media or in any other form (the Original Activ5 Software and Activ5 Software Updates are collectively referred to as the "Activ5 Software") are licensed, not sold, to you by Activbody Inc. ("Activbody") for use only under the terms of this License. Activbody and its licensors retain ownership of the Activ5 Software itself and reserve all rights not

expressly granted to you. You agree that the terms of this License will apply to any Activ5-branded or Activbody-branded software application that may be pre-installed on your Activ5 Device, unless such software application is accompanied by a separate license, in which case you agree that the terms of that license will govern your use of that software application.

Activbody, at its sole discretion, may make available future Activ5 Software Updates for your Activ5 Device. The Activ5 Software Updates, if any, may not necessarily include all existing software features or new features that Activbody releases for newer or other models of Activ5 Devices. The terms of this License will govern any Activ5 Software Updates provided by Activbody that replace or supplement the Original Activ5 Software, unless such Activ5 Software Update is accompanied by a separate license in which case the terms of that license will govern.

2. Permitted License Uses and Restrictions.

Subject to the terms and conditions of this License, you are granted a limited non-exclusive, non-transferable and non-sublicensable license to use the Activ5 Software on a single Activ5 Device. Except as permitted below, and unless as provided in a separate agreement between you and Activbody, this License does not allow the Activ5 Software to exist on more than one Activ5 Device at a time, and you may not distribute or make the Activ5 Software available over a network where it could be used by multiple devices at the same time. This License does not grant you any rights to use Activbody's proprietary interfaces and other Activbody intellectual property in the design, development, manufacture, licensing or distribution of third party devices and accessories, or third party software applications, for use with Activ5 Devices. Some of those rights are available under separate licenses from Activbody. For more information on developing third party devices, software and accessories for Activ5 Devices, please contact Activbody at www.activbody.com.

Subject to the terms and conditions of this License, you are granted a limited non-exclusive, non-transferable and non-sublicensable license to download Activ5 Software Updates that may be made available by Activbody for your model of the Activ5 Device to update or restore the software on any such Activ5 Device that you own or control. This License does not allow you to update or restore any Activ5 Device that you do not control or own, and you may not distribute or make the Activ5 Software Updates available over a network where they could be used by multiple devices or multiple computers at the same time. If you download an Activ5 Software Update to your computer, you may make one copy of the Activ5 Software Update stored on your computer in machine readable form for backup purposes only, provided that the backup copy must include all copyright or other proprietary notices contained on the original.

You may not, and you agree not to or enable others to, copy (except as expressly permitted by this License), decompile, reverse engineer, disassemble, attempt to derive the source code of, decrypt, modify, or create derivative works of the Activ5 Software or any services provided by the Activ5 Software or any part thereof (except as and only to the extent any foregoing restriction is prohibited by applicable law or by licensing terms governing use of open-source components that may be included with the Activ5 Software).

The Activ5 Software may be used to produce or reproduce materials so long as such use is

limited to production or reproduction of non-copyrighted materials, materials in which you own the copyright, or materials you are authorized or legally permitted to reproduce. Title and intellectual property rights in and to any content displayed by, stored on or accessed through your Activ5 Device belong to the respective content owner. Such content may be protected by copyright or other intellectual property laws and treaties, and may be subject to terms of use of the third party providing such content. Except as otherwise provided herein, this License does not grant you any rights to use such content nor does it guarantee that such content will continue to be available to you.

You agree to use the Activ5 Software and the Services (as defined in Section 5 below) in compliance with all applicable laws, including local laws of the country or region in which you reside or in which you download or use the Activ5 Software and Services. Features of the Activ5 Software and the Services may not be available in all languages or regions, some features may vary by region, and some may be restricted or unavailable from your service provider. A Wi-Fi or cellular data connection is required for some features of the Activ5 Software and Services.

You acknowledge that many features and Services of the Activ5 Software transmit data and could impact charges to your data plan, and that you are responsible for any such charges.

3. Transfer.

You may not rent, lease, lend, sell, redistribute, or sublicense the Activ5 Software. You may however, make a one-time permanent transfer of all of your license rights to the Activ5 Software to another party in connection with the transfer of ownership of your Activ5 Device, provided that: (a) the transfer must include your Activ5 Device and all of the Activ5 Software, including all its component parts, original media, printed materials and this License; (b) you do not retain any copies of the Activ5 Software, full or partial, including copies stored on a computer or other storage device; and (c) the party receiving the Activ5 Software reads and agrees to accept the terms and conditions of this License.

4. Consent to Use of Data.

When you use your Activ5 device, certain unique and personal identifiers and data ("User Data") may be sent to Activbody. You consent and agree that Activbody can use all User Data in accordance with its Privacy Policy, which can be viewed at: www.activbody.com.

5. Services and Third Party Materials.

The Activ5 Software may enable access to App Stores and other Activbody and third party services and web sites (collectively and individually, the "Services"). Such Services may not be available in all languages or in all countries. Use of these Services requires Internet access and use of certain Services may require an App Store ID, may require you to accept additional terms and may be subject to additional fees. By using the Activ5 Software in connection with an App Store ID, or other Services, you agree to the applicable terms of service for those Services.

You agree to use the Services at your sole risk and that Activbody, its affiliates, agents, principals, or licensors shall have no liability to you for any content on such Services. Certain Services may display, include or make available content, data, information, applications or materials from third parties ("Third Party Materials") or provide links to certain third party web sites. By using the Services, you acknowledge and agree that Activbody is not responsible for examining or evaluating the content, accuracy, completeness, timeliness, validity, copyright compliance, legality, decency, quality or any other aspect of such Third Party Materials or web sites. Activbody, its officers, affiliates and subsidiaries do not warrant or endorse and do not assume and will not have any liability or responsibility to you or any other person for any third-party Services, Third Party Materials or web sites, or for any other materials, products, or services of third parties. Third Party Materials and links to other web sites are provided solely as a convenience to you.

Neither Activbody, nor any of its content providers guarantees the availability, accuracy, completeness, reliability, or timeliness of data displayed by any Services.

To the extent that you upload any content or User Data through the use of the Services, you represent that you own all rights in, or have authorization or are otherwise legally permitted to upload, such content and User Data and that such content and User Data does not violate any terms of service applicable to the Services. You agree that the Services contain proprietary content, information and material that is owned by Activbody, the site owner or their licensors, and is protected by applicable intellectual property and other laws, including but not limited to copyright. You agree that you will not use such proprietary content, information or materials other than for permitted use of the Services or in any manner that is inconsistent with the terms of this License or that infringes any intellectual property rights of a third party or Activbody. No portion of the Services may be reproduced in any form or by any means. You agree not to modify, rent, lease, loan, sell, distribute, or create derivative works based on the Services, in any manner, and you shall not exploit the Services in any unauthorized way whatsoever, including but not limited to, using the Services to transmit any computer viruses, worms, trojan horses or other malware, or by trespass or burdening network capacity. You further agree not to use the Services in any manner to harass, abuse, stalk, threaten, defame or otherwise infringe or violate the rights of any other party, and that Activbody is not in any way responsible for any such use by you, nor for any harassing, threatening, defamatory, offensive, infringing or illegal messages or transmissions that you may receive as a result of using any of the Services.

In addition, Services and Third Party Materials that may be accessed, linked to or displayed on or in connection with the Activ5 Device are not available in all languages or in all countries or regions. Activbody makes no representation that such Services and Third Party Materials are appropriate or available for use in any particular location. To the extent you choose to use or access such Services and Third Party Materials, you do so at your own initiative and are responsible for compliance with any applicable laws, including but not limited to applicable local laws and privacy and data collection laws. Activbody and its licensors reserve the right to change, suspend, remove, or disable access to any Services at any time without notice. In no event will Activbody be liable for the removal of or disabling of access to any such Services. Activbody may also impose limits on the use of or access to certain Services, in any case and without notice or liability.

6. Termination.

This License is effective until terminated. Your rights under this License will terminate automatically or otherwise cease to be effective without notice from Activbody if you fail to comply with any term(s) of this License. Upon the termination of this License, you shall cease all use of the Activ5 Software.

Sections 4, 5, 6, 7, 8, 9, 11 and 12 of this License shall survive any such termination.

7. Disclaimer of Warranties.

7.1 You may have legal rights in your country of residence which would prohibit the following limitations from applying to you, and where prohibited they will not apply to you. To find out more about rights, you should contact a local consumer advice organization.

7.2 YOU EXPRESSLY ACKNOWLEDGE AND AGREE THAT, TO THE EXTENT PERMITTED BY APPLICABLE LAW, USE OF THE ACTIV5 SOFTWARE AND ANY SERVICES PERFORMED BY OR ACCESSED THROUGH THE ACTIV5 SOFTWARE IS AT YOUR SOLE RISK AND THAT THE ENTIRE RISK AS TO SATISFACTORY QUALITY, PERFORMANCE, ACCURACY AND EFFORT IS WITH YOU.

7.3 TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, THE ACTIV5 SOFTWARE AND SERVICES ARE PROVIDED "AS IS" AND "AS AVAILABLE", WITH ALL FAULTS AND WITHOUT WARRANTY OF ANY KIND, AND ACTIVBODY AND ACTIVBODY'S LICENSORS (COLLECTIVELY REFERRED TO AS "ACTIVBODY" FOR THE PURPOSES OF SECTIONS 7 AND 8 HEREOF) HEREBY DISCLAIM ALL WARRANTIES AND CONDITIONS WITH RESPECT TO THE ACTIV5 SOFTWARE AND SERVICES, EITHER EXPRESS, IMPLIED OR STATUTORY, INCLUDING, BUT NOT LIMITED TO, THE IMPLIED WARRANTIES AND/OR CONDITIONS OF MERCHANTABILITY, SATISFACTORY QUALITY, FITNESS FOR A PARTICULAR PURPOSE, ACCURACY, QUIET ENJOYMENT, AND NON-INFRINGEMENT OF THIRD PARTY RIGHTS.

7.4 ACTIVBODY DOES NOT WARRANT AGAINST INTERFERENCE WITH YOUR ENJOYMENT OF THE ACTIV5 SOFTWARE AND SERVICES, THAT THE FUNCTIONS CONTAINED IN, OR SERVICES PERFORMED OR PROVIDED BY THE ACTIV5 SOFTWARE WILL MEET YOUR REQUIREMENTS, THAT THE OPERATION OF THE ACTIV5 SOFTWARE AND SERVICES WILL BE UNINTERRUPTED OR ERROR-FREE, THAT ANY SERVICE WILL CONTINUE TO BE MADE AVAILABLE, THAT DEFECTS IN THE ACTIV5 SOFTWARE OR SERVICES WILL BE CORRECTED, OR THAT THE ACTIV5 SOFTWARE WILL BE COMPATIBLE OR WORK WITH ANY THIRD PARTY SOFTWARE, APPLICATIONS OR THIRD PARTY SERVICES.

7.5 YOU FURTHER ACKNOWLEDGE THAT THE ACTIV5 SOFTWARE AND SERVICES ARE NOT INTENDED OR SUITABLE FOR USE IN SITUATIONS OR ENVIRONMENTS WHERE THE USE, FAILURE OR TIME DELAYS OF, OR ERRORS OR INACCURACIES IN, THE CONTENT, DATA OR INFORMATION PROVIDED BY THE ACTIV5 SOFTWARE OR SERVICES COULD

LEAD TO DEATH, PERSONAL INJURY, OR SEVERE PHYSICAL OR ENVIRONMENTAL DAMAGE.

7.6 NO ORAL OR WRITTEN INFORMATION OR ADVICE GIVEN BY ACTIVBODY OR AN ACTIVBODY AUTHORIZED REPRESENTATIVE SHALL CREATE A WARRANTY. SHOULD THE ACTIV5 SOFTWARE OR SERVICES PROVE DEFECTIVE, YOU ASSUME THE ENTIRE COST OF ALL NECESSARY SERVICING, REPAIR OR CORRECTION.

SOME JURISDICTIONS DO NOT ALLOW THE EXCLUSION OF IMPLIED WARRANTIES OR LIMITATIONS ON APPLICABLE STATUTORY RIGHTS OF A CONSUMER, SO THE ABOVE EXCLUSION AND LIMITATIONS MAY NOT APPLY TO YOU.

8. Limitation of Liability.

TO THE EXTENT NOT PROHIBITED BY APPLICABLE LAW, IN NO EVENT SHALL ACTIVBODY, ITS AFFILIATES, AGENTS OR PRINCIPALS BE LIABLE FOR PERSONAL INJURY, OR ANY INCIDENTAL, SPECIAL, INDIRECT OR CONSEQUENTIAL DAMAGES WHATSOEVER, INCLUDING, WITHOUT LIMITATION, DAMAGES FOR LOSS OF PROFITS, CORRUPTION OR LOSS OF DATA, FAILURE TO TRANSMIT OR RECEIVE ANY DATA (INCLUDING WITHOUT LIMITATION COURSE INSTRUCTIONS, ASSIGNMENTS AND MATERIALS), BUSINESS INTERRUPTION OR ANY OTHER COMMERCIAL DAMAGES OR LOSSES, ARISING OUT OF OR RELATED TO YOUR USE OR INABILITY TO USE THE ACTIV5 SOFTWARE AND SERVICES OR ANY THIRD PARTY SOFTWARE OR APPLICATIONS IN CONJUNCTION WITH THE ACTIV5 SOFTWARE OR SERVICES, HOWEVER CAUSED, REGARDLESS OF THE THEORY OF LIABILITY (CONTRACT, TORT OR OTHERWISE) AND EVEN IF ACTIVBODY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.

SOME JURISDICTIONS DO NOT ALLOW THE EXCLUSION OR LIMITATION OF LIABILITY FOR PERSONAL INJURY, OR OF INCIDENTAL OR CONSEQUENTIAL DAMAGES, SO THIS LIMITATION MAY NOT APPLY TO YOU.

In no event shall Activbody's total liability to you for all damages (other than as may be required by applicable law in cases involving personal injury) exceed the amount of one hundred and fifty U.S. dollars (U.S. \$150.00). The foregoing limitations will apply even if the above stated remedy fails of its essential purpose.

9. Digital Certificates.

The Activ5 Software may contain functionalities that allows it to accept digital certificates either issued from Activbody or from third parties. YOU ARE SOLELY RESPONSIBLE FOR DECIDING WHETHER OR NOT TO RELY ON A CERTIFICATE WHETHER ISSUED BY ACTIVBODY OR A THIRD PARTY. YOUR USE OF DIGITAL CERTIFICATES IS AT YOUR SOLE RISK. TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, ACTIVBODY MAKES NO WARRANTIES OR REPRESENTATIONS, EXPRESS OR IMPLIED, AS TO MERCHANTABILITY OR FITNESS FOR ANY PARTICULAR PURPOSE, ACCURACY, SECURITY, OR NON-INFRINGEMENT OF THIRD PARTY RIGHTS WITH RESPECT TO DIGITAL CERTIFICATES.

10. Export Control.

You may not use or otherwise export or re-export the Activ5 Software except as authorized by United States law and the laws of the jurisdiction(s) in which the Activ5 Software was obtained. In particular, but without limitation, the Activ5 Software may not be exported or re-exported: (a) into any U.S. embargoed countries; or (b) to anyone on the U.S. Treasury Department's list of Specially Designated Nationals or the U.S. Department of Commerce Denied Person's List or Entity List or any other restricted party lists. By using the Activ5 Software, you represent and warrant that you are not located in any such country or on any such list. You also agree that you will not use the Activ5 Software for any purposes prohibited by United States law, including, without limitation, the development, design, manufacture or production of missiles, nuclear, chemical or biological weapons.

11. Controlling Law and Severability.

This License will be governed by and construed in accordance with the laws of the State of California, excluding its conflict of law principles. This License shall not be governed by the United Nations Convention on Contracts for the International Sale of Goods, the application of which is expressly excluded. If for any reason a court of competent jurisdiction finds any provision, or portion thereof, to be unenforceable, the remainder of this License shall continue in full force and effect.

12. Complete Agreement; Governing Language.

This License constitutes the entire agreement between you and Activbody relating to the Activ5 Software and supersedes all prior or contemporaneous understandings regarding such subject matter. No amendment to or modification of this License will be binding unless in writing and signed by an authorized representative of Activbody.

13. Third Party Acknowledgements.

Portions of the Activ5 Software may utilize or include third party software and other copyrighted material. Acknowledgements, licensing terms and disclaimers for such material are contained in the electronic documentation for the Activ5 Software, and your use of such material is governed by their respective terms.

14. Dispute Resolutions.

You agree that any dispute between you and Activbody arising out of or relating to this License, the Activ5 Software, the Services or any other Activbody products, devices or services (collectively, "Disputes") will be governed by the arbitration procedure outlined below.

Informal Dispute Resolution: We want to address your concerns without the need of a formal legal case. Before filing a claim against Activbody, you agree to try to resolve the Dispute informally by contacting service@activbody.com. We will try to resolve the Dispute informally by contacting you. If a dispute is not resolved within 30 days after submission, you or

Activbody may bring a formal proceeding.

We Both Agree To Arbitrate: You and Activbody agree to resolve any Disputes through final and binding arbitration, except as set forth under Exceptions to Agreement to Arbitrate below.

Opt-out of Agreement to Arbitrate: You can decline this agreement to arbitrate by contacting service@activbody.com within 30 days of first accepting this License and stating that you (include your first and last name) decline this arbitration agreement.

Arbitration Procedures: The American Arbitration Association ("AAA") will administer the arbitration under its Commercial Arbitration Rules and the Supplementary Procedures for Consumer Related Disputes. The arbitration will be held in Orange County, California, or any other location we agree to.

Arbitration Fees: The AAA rules will govern payment of all arbitration fees. Activbody will pay all arbitration fees for claims less than \$25,000. Activbody will not seek its attorneys' fees and costs in arbitration unless the arbitrator determines that your claim is frivolous.

Exceptions to Agreement to Arbitrate: Either you or Activbody may assert claims, if they qualify, in small claims court in Orange County, California. Either party may bring a lawsuit solely for injunctive relief to stop unauthorized use or abuse of the License, the Activ5 Software, the Services, Activbody devices or services, or infringement of intellectual property rights (for example, trademark, trade secret, copyright or patent rights) without first engaging in arbitration or the informal dispute-resolution process described above.

No Class Actions: You may only resolve Disputes with Activbody on an individual basis, and may not bring a claim as a plaintiff or a class member in a class, consolidated, or representative action. Class arbitrations, class actions, private attorney general actions, and consolidation with other arbitrations are not allowed under this License or the Services.

Judicial Forum for Disputes: In the event that the agreement to arbitrate is found not to apply to you or your claim, you and Activbody agree that any judicial proceeding will be brought in the federal or state courts of Orange County, California. Both you and Activbody consent to venue and personal jurisdiction there. We both agree to waive our right to a jury trial.

Limitation on Claims: Regardless of any statute or law to the contrary, any claim or cause of action arising out of or related to your purchase and use of the License, the Services, Activbody devices or services must be filed within one (1) year after such claim or cause of action arose, or else that claim or cause of action will be barred forever.

© 2013 - 2019 ActivBody, Inc. All rights reserved.

Activbody, Activ5, Exercise Anywhere, Tiny Gym in Your Pocket and the Activ5 logo are all trademarks of Activbody, Inc. Pat: www.activ5.com/patents